

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 10/715,417 Confirmation No.: 5850
Applicant : Eivind Per Thor STRATEN, *et al.*
Filed : November 19, 2003
Title : SURVIVIN-DERIVED PEPTIDES AND USE THEREOF
TC/Art Unit : 1644
Examiner: : Marianne DIBRINO, Ph.D.
Docket No. : 60820.000004
Customer No. : **21967**

MAIL STOP PATENT TERM EXT.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

**REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)**

Dear Sir:

Applicants submit herein a Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. § 1.705(b) ("Request") of the 295 days indicated for the above-identified application. Applicants respectfully request that a minimum patent term adjustment of **1049 days** be granted.

This Request is being filed before the payment of the issue fee (*i.e.*, January 4, 2011) and after the date of mailing of the notice of allowance (*i.e.*, October 4, 2010), therefore this Petition is timely filed.¹

In accordance with 37 C.F.R. § 1.705(b)(1), please charge the fee of \$200 as set forth in 37 C.F.R. § 1.18(e) to the undersigned's **Deposit Account No. 50-0206**. In the event any additional fees are required for consideration of this Request, the U.S. Patent and Trademark Office ("USPTO") is authorized to charge these fees to the undersigned's **Deposit Account No. 50-0206**.

Remarks begin on page 2.

¹ See 37 C.F.R. § 1.705(b).

REMARKS

Applicants request reconsideration under 37 C.F.R. § 1.705(b) of the patent term adjustment for U.S. Patent Application No. 10/715,417 (“the ’417 application”). In view of the following, it is respectfully requested that Applicants be granted a minimum patent term adjustment of **1049 days**.

Statement Under 37 C.F.R. § 1.705(b)(2)

The patent term adjustment (“PTA”) under 35 U.S.C. § 154(b) listed on PAIR for the ’417 application is 295 days.² This determination is in error because the USPTO failed to issue a patent within three years of the actual filing date of the above-identified patent in accordance with 37 C.F.R. § 1.702(b).

Calculation of PTA Under 37 C.F.R. § 1.703

The following facts are relevant for determining PTA for the ’417 application:

- November 19, 2003— U.S. Patent Application No. 10/715,417 application filed.
- January 19, 2005— the “fourteen month date” on which an Office Action should have been mailed (*i.e.*, beginning of “A period”).
- October 10, 2006— Restriction Requirement mailed (*i.e.*, end of “A period”)
- November 19, 2006— three years from filing date of application (*i.e.*, beginning of “B period”).
- December 12, 2008— Request for Continued Examination filed (*i.e.*, end of the “B period”).
- October 4, 2010— Notice of Allowance mailed.
- January 4, 2011—Issue Fee due.

² See **Exhibit A** (USPTO Patent Term Adjustment History).

1. “A” Periods under 37 C.F.R. § 1.702(a)(2)

The number of days from the beginning of the “A period” (January 19, 2005, *i.e.*, fourteen months from the filing day of the application) to the end of the “A period” (October 10, 2006, *i.e.*, the day a first office action was mailed) is 629 days.³ The total A delay is 640 days and this is in agreement with the USPTO’s calculations.⁴

2. “B” Periods under 37 C.F.R. § 1.702(b)

The number of days from the beginning of the “B period” (November 19, 2006, *i.e.*, three years from the filing day of the application) to the end of the “B period” (December 12, 2008, *i.e.*, the day the request for Request for Continued Examination was filed) is 754 days.⁵

3. No Overlap between A, B, and/or C Periods

The A period began on January 19, 2005 and ended on October 10, 2006.⁶ The B Period began on November 19, 2006 and ended on December 12, 2008.⁷ Thus, the A and B period do not overlap.⁸

4. Delay Attributed to Applicant

The USPTO calculated Applicants’ delay in the ’417 application as 345 days.⁹

³ See 37 C.F.R. § 1.702(a)(2).

⁴ Applicants note an additional 11 days of A delay accrued on December 28, 2009. See **Exhibit A** (USPTO Patent Term Adjustment History).

⁵ See **Exhibit B** (Transaction History).

⁶ See 1 above.

⁷ See 2 above.

⁸ See, *e.g.*, Wyeth v. Kappos, 591 F.3d 1364, 93 U.S.P.Q.2d 1257 (Fed. Cir., 2010).

⁹ See **Exhibit A** (USPTO Patent Term Adjustment History).

5. PTA = (A Period + B Period + C Period) – Applicants Delay

The PTA should be calculated as follows:

A period = 640 days. *See* 1. above

B period = 754 days. *See* 2. above.

Overlap = 0 days. *See* 3 above.

Applicants delay = 345 days. *See* 4 above.

$(640 + 754) - 345 = 1049$ days

Accordingly, Applicants respectfully request that the '417 application be granted a minimum PTA of at least **1049 days**.

6. Per 37 C.F.R. § 1.705(b)(2)(iv)(B), there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application.

7. Per 37 C.F.R. § 1.705(b)(2)(iii), the '417 application is not subject to a terminal disclaimer.

CONCLUSION

In view of the above remarks, it is respectfully requested that this Request for Reconsideration of Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a minimum patent term adjustment of **1049 days**.

Respectfully submitted,
HUNTON & WILLIAMS LLP

Dated: January 3, 2011

By: 

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U.S. Patent Application No. 10/715,417
Attorney Docket No. 60820.000004

EXHIBIT A
USPTO Patent Term Adjustment History

10/715,417 SURVIVIN-DERIVED PEPTIDES AND USE THEREOF

01-03-
2011::15:34:27**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/715,417

Filing or 371(c) Date:	11-19-2003	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	640
A Delays:	640	PTO Manual Adjustments:	0
B Delays:	0	Applicant Delays:	345
C Delays:	0	Total PTA Adjustments:	295

Patent Term Adjustment History Explanation Of Calculations

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
105	10-04-2010	Mail Notice of Allowance			0
104	09-30-2010	Issue Revision Completed			0
103	09-30-2010	Notice of Allowance Data Verification Completed			0
102	09-30-2010	Document Verification			0
101	09-29-2010	Notice of Allowability			0
100	07-30-2010	Information Disclosure Statement considered			0
99	08-10-2010	Information Disclosure Statement considered			0
97	08-10-2010	Information Disclosure Statement (IDS) Filed			0
96	08-10-2010	Information Disclosure Statement (IDS) Filed			0
95	07-30-2010	Reference capture on IDS			0
94	07-30-2010	Information Disclosure Statement (IDS) Filed			0
93	07-30-2010	Request for Continued Examination (RCE)			0
92	08-02-2010	Disposal for a RCE / CPA / R129			0
91	08-02-2010	TC Return to Pubs			0
90	07-30-2010	Information Disclosure Statement (IDS) Filed			0
89	07-30-2010	Workflow - Request for RCE - Begin			0
88	06-16-2010	Finished Initial Data Capture			0
87	05-19-2010	Sequence Forwarded to Pubs on Tape			0

86	05-04-2010	Export to Initial Data Capture		0
85	04-30-2010	Mail Notice of Allowance		0
84	04-12-2010	Document Verification		0
83	04-12-2010	Issue Revision Completed		0
82	04-12-2010	Notice of Allowance Data Verification Completed		0
81	04-12-2010	Case Docketed to Examiner in GAU		0
80	04-09-2010	Notice of Allowability		0
79	01-26-2010	Information Disclosure Statement considered		0
78	03-31-2010	Date Forwarded to Examiner		0
77	03-29-2010	Amendment after Final Rejection	1	69
76	03-12-2010	Mail Advisory Action (PTOL - 303)		0
75	03-11-2010	Advisory Action (PTOL-303)		0
74	01-26-2010	Information Disclosure Statement (IDS) Filed		0
73	03-04-2010	Date Forwarded to Examiner		0
72	03-01-2010	Amendment after Final Rejection		0
71	10-23-2009	Information Disclosure Statement (IDS) Filed	67	61
70	01-26-2010	Information Disclosure Statement (IDS) Filed		0
69	12-28-2009	Mail Final Rejection (PTOL - 326)	11	61
68	12-22-2009	Final Rejection		0
67	09-25-2009	Information Disclosure Statement considered		0
66	10-23-2009	Information Disclosure Statement considered		0
65	10-23-2009	Information Disclosure Statement (IDS) Filed		0
64	09-25-2009	Information Disclosure Statement (IDS) Filed		0
63	09-25-2009	Information Disclosure Statement (IDS) Filed		0
62	09-24-2009	Date Forwarded to Examiner		0

61	08-17-2009	Response after Non-Final Action	92	57
60	08-17-2009	Request for Extension of Time - Granted		0
59	08-21-2009	Paralegal TD Accepted		0
58	08-21-2009	Paralegal TD Accepted		0
57	02-17-2009	Mail Non-Final Rejection		0
56	02-17-2009	Non-Final Rejection		0
54	12-31-2008	Date Forwarded to Examiner		0
53	12-12-2008	Amendment Submitted/Entered with Filing of CPA/RCE		0
52	12-31-2008	Date Forwarded to Examiner		0
51	12-12-2008	Request for Continued Examination (RCE)		41
50	12-31-2008	Disposal for a RCE / CPA / R129		0
49	12-12-2008	Request for Extension of Time - Granted		0
48	12-12-2008	Workflow - Request for RCE - Begin		0
47	09-16-2008	CRF Is Good Technically / Entered into Database		0
46	07-28-2008	Miscellaneous Incoming Letter		0
45	07-09-2008	Mail Advisory Action (PTOL - 303)		0
44	07-03-2008	Advisory Action (PTOL-303)		0
43	06-24-2008	Date Forwarded to Examiner		0
42	06-12-2008	Amendment/Argument after Notice of Appeal		0
41	06-12-2008	Notice of Appeal Filed	92	39
40	06-12-2008	Request for Extension of Time - Granted		0
39	12-12-2007	Mail Final Rejection (PTOL - 326)		0
38	12-10-2007	Final Rejection		0
37	09-24-2007	Information Disclosure Statement considered		0
36	10-04-	Date Forwarded to Examiner		0

	2007			
35	09-24-2007	Response after Non-Final Action	93	30
34	09-24-2007	Request for Extension of Time - Granted		0
33	09-24-2007	Information Disclosure Statement (IDS) Filed		0
32	09-24-2007	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		0
31	09-24-2007	Information Disclosure Statement (IDS) Filed		0
30	03-23-2007	Mail Non-Final Rejection		0
29	03-19-2007	Non-Final Rejection		0
28	08-24-2004	Information Disclosure Statement considered		0
27	01-04-2007	Date Forwarded to Examiner		0
26	12-21-2006	Response to Election / Restriction Filed		0
25	12-21-2006	Request for Extension of Time - Granted		0
24	10-10-2006	Mail Restriction Requirement	629	-1
23	09-29-2006	Requirement for Restriction / Election		0
22	01-15-2006	IFW TSS Processing by Tech Center Complete		0
21	08-24-2004	Miscellaneous Incoming Letter		0
20	08-24-2004	Reference capture on IDS		0
19.7	08-24-2004	Information Disclosure Statement (IDS) Filed		0
19	08-24-2004	Information Disclosure Statement (IDS) Filed		0
18	05-12-2004	Case Docketed to Examiner in GAU		0
17	11-19-2003	Preliminary Amendment		0
16	05-03-2004	Application Return from OIPE		0
15	05-03-2004	Application Return TO OIPE		0
14	05-03-2004	Application Dispatched from OIPE		0
13	05-03-2004	Application Is Now Complete		0

12	04-21-2004	Additional Application Filing Fees	0
11	04-21-2004	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	0
10	04-21-2004	CRF Disk Has Been Received by Preexam / Group / PCT	0
9	04-21-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
8	04-21-2004	Applicant has submitted new drawings to correct Corrected Papers problems	0
7	04-28-2004	CRF Is Good Technically / Entered into Database	0
6	01-21-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	12-16-2003	Cleared by OIPE CSR	0
3	12-16-2003	CASE CLASSIFIED BY OIPE	0
2	12-15-2003	IFW Scan & PACR Auto Security Review	0
1	11-19-2003	Initial Exam Team nn	0

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EXHIBIT B
Transaction History

10/715,417 SURVIVIN-DERIVED PEPTIDES AND USE THEREOF

01-03-
2011::15:32:12**Transaction History**

Date	Transaction Description
10-19-2010	Sequence Forwarded to Pubs on Tape
10-04-2010	Mail Notice of Allowance
09-30-2010	Notice of Allowance Data Verification Completed
09-30-2010	Document Verification
07-30-2010	Information Disclosure Statement considered
08-10-2010	Information Disclosure Statement considered
08-10-2010	Information Disclosure Statement (IDS) Filed
08-10-2010	Information Disclosure Statement (IDS) Filed
07-30-2010	Reference capture on IDS
07-30-2010	Information Disclosure Statement (IDS) Filed
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04-12-2010	Document Verification
04-12-2010	Notice of Allowance Data Verification Completed
04-12-2010	Case Docketed to Examiner in GAU
01-26-2010	Information Disclosure Statement considered
03-31-2010	Date Forwarded to Examiner
03-29-2010	Amendment after Final Rejection
03-12-2010	Mail Advisory Action (PTOL - 303)
03-11-2010	Advisory Action (PTOL-303)
01-26-2010	Information Disclosure Statement (IDS) Filed
03-04-2010	Date Forwarded to Examiner
03-01-2010	Amendment after Final Rejection
10-23-2009	Information Disclosure Statement (IDS) Filed
01-26-2010	Information Disclosure Statement (IDS) Filed
12-28-2009	Mail Final Rejection (PTOL - 326)
12-22-2009	Final Rejection
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12-15-2003	IFW Scan & PACR Auto Security Review
11-19-2003	Initial Exam Team nn

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